

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

LEXOS MEDIA IP, LLC,	§	
	§	
v.	§	Civil Action No. 2:22-CV-00169-JRG
	§	(Lead Case)
AMAZON.COM, INC.	§	

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LEXOS MEDIA IP, LLC,	§	
	§	
v.	§	Civil Action No. 2:22-CV-00175-JRG
	§	(Member Case)
TARGET CORPORATION	§	

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LEXOS MEDIA IP, LLC,	§	
	§	
v.	§	Civil Action No. 2:22-CV-00273-JRG
	§	(Member Case)
OFFICE DEPOT, LLC.	§	

**PARTIES' JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**

Pursuant to Patent Rule 4-3 and the Court's First Amended Docket Control Order (Dkt. 87), Plaintiff Lexos Media, IP LLC ("Plaintiff" or "Lexos Media") and Defendants Amazon.com, Inc., Target Corporation, and Office Depot, LLC (collectively, "Defendants") hereby submit their Joint Claim Construction and Prehearing Statement.

The patents-in-suit are U.S. Patent Nos. 5,995,102 (the "'102 Patent"), 6,118,449 (the "'449 Patent"), and 7,975,241 (the "'241 Patent") (collectively, "the Asserted Patents"). The '102 Patent was issued on November 30, 1999, based upon an application filed on June 25, 1997. The '499 Patent was issued on September 12, 2000, based upon a continuation application of the '102

Patent. The '241 Patent was issued on July 5, 2011, based upon the same specification as in the application for the '102 Patent. Plaintiff has asserted that Defendants have infringed Claim 72 of the '102 Patent, Claims 1, 38, and 53 of the '449 Patent, and Claim 35 of the '241 Patent.

Section I below identifies the terms, phrases, or clauses within the asserted claim elements of the Asserted Patents for which the Parties have agreed as to the proper construction. Section II below and Exhibits 1-3 set forth the Parties' proposed constructions for the disputed the terms, phrases, or clauses within the claim elements of the Asserted Patents, along with the identification of supporting intrinsic and extrinsic evidence. Section III below states the Parties' positions regarding the length of the claim construction hearing. Section IV below addresses the expert testimony that the Parties may rely on in support of their proposed claim constructions. Section V below addresses the Parties' current position on the need for a prehearing conference.

#### **I. P.R. 4-3(a)(1): Agreed Claim Construction**

Pursuant to Patent Rule 4-3(a)(1), the Parties have agreed to the construction of the claim terms, phrases, or clauses set forth hereto:<sup>1</sup>

<b>PROPOSED CLAIM TERM</b>	<b>PARTIES' PROPOSED CONSTRUCTION</b>
<b>"modified cursor image"</b> <i>See '449 Patent, Claims 1 and 38; '241 Patent, Claim 35.</i>	"cursor image" should be construed as set forth separately.  Plain and ordinary meaning.
<b>"promotional material"</b> <i>See '241 Patent, Claim 35.</i>	Plain and ordinary meaning.

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<sup>1</sup> If the Parties reach an agreement at a later date regarding any additional claim terms, the Parties plan to supplement this Joint Claim Construction and Prehearing Statement to reflect this agreement.

PROPOSED CLAIM TERM	PARTIES' PROPOSED CONSTRUCTION
<p><b>“said specific image includes/including content corresponding to at least a portion of said information that is to be displayed on said display of said user’s terminal”</b></p> <p><i>See</i> ’102 Patent, Claim 72; ’449 Patent, Claims 1, 38, 53.</p>	<p>“an image representative of at least a portion of the subject or topic being displayed on the screen”</p> <p><i>Lexos Media IP, LLC v. APMEX, Inc.</i>, No. 216CV00747JRGRSP, 2017 WL 1021366, at *5–6 (E.D. Tex. Mar. 16, 2017).</p>
<p><b>“specified content information”</b></p> <p><i>See</i> ’102 Patent, Claim 72; ’449 Patent, Claims 1, 38 and 53.</p> <p><b>“content information”</b></p> <p><i>See</i> ’241 Patent, Claim 35.</p>	<p>The term “specified content information” / “content information” means “information provided to a user’s terminal for use in the display, such as a web page.”</p>
<p><b>“visual image”</b></p> <p><i>See</i> ’241 Patent, Claim 35.</p>	<p>Plain and ordinary meaning.</p>

## II. P.R. 4-3(b): Disputed Claim Construction

Pursuant to Patent Rule 4-3(a)(2), the charts identifying each party’s proposed construction of each disputed claim term, phrase, or clause, together with an identification of all intrinsic and extrinsic evidence are set forth in the exhibits attached hereto:

CHART	EXHIBIT(S)
Parties’ Joint Claim Construction Chart	Exhibit 1
Plaintiff’s Claim Construction Chart Identifying Supporting Evidence	Exhibit 2
Defendants’ Claim Construction Chart Identifying Supporting Evidence	Exhibit 3

### **III. P.R. 4-3(a)(3): Length of Claim Construction Hearing**

According to the Court's First Amended Docket Control Order (Dkt. 87) and the Court's Notice of Hearing entered on April 26, 2023, the Claim Construction Hearing is scheduled to be held on August 9, 2023 at 9:00 a.m. in Marshall, Texas before Judge Rodney Gilstrap.

Pursuant to Patent Rule 4-3(a)(3), the Parties anticipate requiring 90 minutes per side for the Claim Construction Hearing.

### **IV. P.R. 4-3(a)(4): Witness Testimony at Claim Construction Hearing**

Pursuant to Patent Rule 4-3(a)(4), the Parties have agreed to not rely on expert witness testimony to support their claim construction arguments and hence, do not propose to call any witnesses, including experts, to provide testimony at the Claim Construction hearing.

### **V. Patent Rule 4-3(a)(5): Other Issues**

Pursuant to Patent Rule 4-3(a)(5), the Parties do not believe that there are any other issues which might appropriately be taken up at a prehearing conference prior to the Claim Construction Hearing.

Dated: May 16, 2023

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(c) on this 16th day of May 2023. Any other counsel of record will be served by facsimile transmission and first class mail.

/s/ Eric W. Buether

Eric W. Buether

### **CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that that counsel for the Parties have met and conferred on the 9<sup>th</sup> day of May 2023 regarding the content herein, and the Parties are all in agreement with this Joint Submission.

/s/ Eric W. Buether

Eric W. Buether